

**54-4-25 Certificate of convenience and necessity prerequisite to construction and operation
-- Electrical suppliers.**

- (1) Except as provided in Section 11-13-304, a gas corporation, electric corporation, telephone corporation, telegraph corporation, heat corporation, water corporation, or sewerage corporation may not establish, or begin construction or operation of a line, route, plant, or system or of any extension of a line, route, plant, or system, without having first obtained from the commission a certificate that present or future public convenience and necessity does or will require the construction.
- (2) This section may not be construed to require any corporation to secure a certificate for an extension:
 - (a) within any city or town within which it has lawfully commenced operations;
 - (b) into territory, either within or without a city or town, contiguous to its line, plant, or system that is not served by a public utility of like character; or
 - (c) within or to territory already served by it, necessary in the ordinary course of its business.
- (3) If any public utility in constructing or extending its line, plant, or system interferes or may interfere with the operation of the line, plant, or system of any other public utility already constructed, the commission, on complaint of the public utility claiming to be injuriously affected, may, after a hearing, make an order and prescribe the terms and conditions for the location of the lines, plants, or systems affected as the commission determines are just and reasonable.
- (4)
 - (a)
 - (i) Each applicant for a certificate shall file in the office of the commission evidence as required by the commission to show that the applicant has received or is in the process of obtaining the required consent, franchise, or permit of the proper county, city, municipal, or other public authority.
 - (ii) If the applicant is in the process of obtaining the required consent, franchise, or permit, a certificate shall be conditioned upon:
 - (A) receipt of the consent, franchise, or permit within the time period the commission may direct; and
 - (B) the filing of such evidence of the receipt of the consent, franchise, or permit as the commission may require.
 - (b) Each applicant, except an interlocal entity defined in Section 11-13-103, shall also file in the office of the commission a statement that any proposed line, plant, or system will not conflict with or adversely affect the operations of any existing certificated fixed public utility which supplies the same product or service to the public and that it will not constitute an extension into the territory certificated to the existing fixed public utility.
 - (c) The commission may, after a hearing:
 - (i) issue the certificate as requested;
 - (ii) refuse to issue the certificate; or
 - (iii) issue the certificate for the construction of a portion only of the contemplated line, plant, or system, or extension thereof, or for the partial exercise only of the right or privilege.
 - (d) The commission may attach to the exercise of the rights granted by the certificate the terms and conditions as in its judgment public convenience and necessity may require.
 - (e)
 - (i) If a public utility desires to exercise a right or privilege under a franchise or permit which it contemplates securing but which has not yet been granted to it, the public utility may apply to the commission for an order preliminary to the issue of the certificate.

- (ii) The commission may make an order declaring that it will upon application, under rules and regulations as it may prescribe, issue the desired certificate upon terms and conditions as it may designate after the public utility has obtained the contemplated franchise or permit.
 - (iii) Upon presentation to the commission of evidence satisfactory to it that the franchise or permit has been secured by the public utility, the commission shall issue the certificate.
- (5)
 - (a) Any supplier of electricity which is brought under the jurisdiction and regulation of the Public Service Commission by this title may file with the commission an application for a certificate of convenience and necessity, giving the applicant the exclusive right to serve the customers it is serving in the area in which it is serving at the time of this filing, subject to the existing right of any other electrical corporation to likewise serve its customers in existence in the area at the time.
 - (b) The application shall be prima facie evidence of the applicant's rights to a certificate, and the certificate shall be issued within 30 days after the filing, pending which, however, the applicant shall have the right to continue its operations.
 - (c) Upon good cause shown to the commission by anyone protesting the issuance of such a certificate, or upon the commission's own motion, a public hearing may be held to determine if the applicant has sufficient finances, equipment, and plant to continue its existing service. The commission shall issue its order within 45 days after the hearing according to the proof submitted at the hearing.
 - (d) Every electrical corporation, save and except those applying for a certificate to serve only the customers served by applicant on May 11, 1965, applying for a certificate shall have established a ratio of debt capital to equity capital or will within a reasonable period of time establish a ratio of debt capital to equity capital which the commission shall find renders the electrical corporation financially stable and which financing shall be found to be in the public interest.
- (6) Nothing in this section affects the existing rights of municipalities.
- (7) The commission shall consolidate an action filed under Chapter 17, Part 3, Resource Plans and Significant Energy Resource Approval or Part 4, Voluntary Request for Resource Decision Review with a proceeding under this section if:
 - (a) a public utility is required to obtain a certificate of convenience and necessity pursuant to this section; and
 - (b) the public utility files an action under Chapter 17, Part 3, Resource Plans and Significant Energy Resource Approval or Part 4, Voluntary Request for Resource Decision Review.

Amended by Chapter 11, 2005 General Session